

Rose Ann Fleming  
ROSE ANN FLEMING PROFESSIONAL CORPORATION  
3855 Ledgewood Drive, Suite 13  
Cincinnati, OH 45207  
Phone: 513-924-8389  
Fax: 513-924-8389  
Email: Fleming@xavier.edu  
Attorney for Plaintiff

THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO (CINCINNATI)  
WESTERN DIVISION

**OLLEN G. COLBERT, Jr.,**

Plaintiff,

vs.

**CINERGY,  
THE CINCINNATI GAS AND ELECTRIC  
COMPANY,**

**AND**

**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS,  
LOCAL 1347,**

Defendants.

Case No.: 1:00-CV-909

Judge Susan J. Dlott  
Magistrate Judge Timothy J. Hogan

**LEON WATERS' AFFIDAVIT IN  
SUPPORT OF COLBERT'S  
MEMORANDUM IN OPPOSITION TO  
INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL  
1347'S MOTION FOR SUMMARY  
JUDGMENT and  
COLBERT'S MEMORANDUM IN  
OPPOSITION TO CINERGY/THE  
CINCINNATI GAS AND ELECTRIC  
COMPANY'S MOTION FOR SUMMARY  
JUDGMENT**

STATE OF OHIO                     )  
  )SS:  
COUNTY OF HAMILTON         )

I, Leon Waters, undersigned Affiant, having been duly warned and cautioned, do hereby  
depose and state:

1. I was employed by Cincinnati Gas and Electric Company on May 7, 1983.
2. I was unfairly terminated by the Cincinnati Gas and Electric Company based on  
an invalid drug test which the Company forced me to take based on its "reasonable  
suspicion" on or about July 9, 2001.

3. I have been a dues paying member of the International Brotherhood of Electrical Workers, Local 1347, contemporaneously with my employment with Cincinnati Gas and Electric Company.

4. During the course of my employment with The Cincinnati Gas and Electric Company, I was sent to work at Brecon Heavy Duty Equipment and Repairs District on or about July 2, 2001

5. From the time of my assignment at Brecon, I came to know Ollen G. Colbert, Jr., another employee at Brecon.

6. Colbert was supervised by management much more than any other employee in the Brecon Pole Yard.

7. Colbert was always subjected to white supervisors who supervised him more than any other employee under management's control.

8. The white supervisors, Kenny Miller and Donald Bricking, used to ask Black co-workers who served as "lead persons" for particular work crew assignments about Colbert's behavior.

9. If you reported that Colbert was not industrious, Colbert would be disciplined.

10. For example, I was sent for by Kenny Miller who wanted to see me because in his estimation I was a friend of Colbert's. Miller then asked me if I saw Colbert take a gun out of his automobile on Company property.

11. When I said that I never saw Colbert take the gun out of his car, Miller was disappointed with my answer. He said someone told him that Ollen had a gun in his possession on Company property.

12. I was present the day that Colbert got indefinitely suspended.

13. Colbert had come to work in work-clothes but waited for management to determine what time he could leave.

14. Colbert wanted a secure time to leave to insure his opportunity to speak with his Union representative prior to the grievance hearing on March 2, 2000 at 1:30 p.m. to be held in downtown Cincinnati.

15. This type of employee needs generally was handled without incident, based on the past pattern and practice of the Company. For anyone else, the Company would simply provide a room to sit down and do some paper work until it was time to go.

16. For Colbert, Bricking allowed this transaction to get totally out of hand.

17. Bricking had asked Willie Wilson who did not like Colbert to arrange some work in the pole yard. Colbert was offered painting or cutting poles. These jobs were in contrast to the sit-down paper-work type job historically offered to other employees.

18. When Colbert kept asking Bricking for a definite time before he chose his work for the morning, Bricking kept insisting that Colbert choose his work before giving him a definite answer.

19. Had Bricking just given Colbert an inside, sit-down type job based on the past practice of the Company, Colbert would not have been suspended indefinitely for insubordination.

20. No one from the Company or the Union asked me about this event.

21. In my opinion, the Union's only function is to collect dues. Other than that, Local Union 1347 is almost non existent when it comes to aggressive representation of a member who has been demoted or terminated.

22. I have made Complaints against Ollen, involuntarily when interrogated by Management.


23. For example in July, 1999, the equipping of a work vehicle was slow. Management asked me why it was taking so long. I essentially blamed Ollen Colbert because it was so easy to use him as a whipping boy for the Company and I knew that the Union would not defend him.

24. I am available to come to Court as a witness for Ollen Colbert against the discriminatory, hostile and retaliatory treatment that he received from CG&E.

25. I am available to come to Court as a witness for Ollen Colbert that the Union failed to investigate, from eye witnesses such as myself, his indefinite suspension from the Company which would have supplied some support for Colbert's statements.

26. I am submitting this statement under R. 56(e) of the Federal Rules of Civil Procedure.

AFFIANT FURTHER SAYETH NAUGHT.

  
Leon Waters, Affiant

Sworn to and subscribed before me, this 21<sup>st</sup> day of March, 2005.

  
NOTARY PUBLIC

My Commission expires: 6/22/08



JANE A. ROBERTS  
Notary Public, State of Ohio  
My Commission Expires 06-22-08

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on 29<sup>th</sup> March, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Ariane Schallwig Johnson, Esq.  
Legal Department  
Cinergy Services, Inc.  
1000 E. Main Street  
Plainfield, IN 46168  
Telephone: 317-838-1235  
Fax: 317-838-1842  
[Ariane.johnson@cinergy.com](mailto:Ariane.johnson@cinergy.com)

And

Jerry A. Spicer  
Snyder, Rakay & Spicer  
11 West Monumnet Building, Suite 307  
Dayton, OH 45402  
Telephone: 937-228-2696  
Fax: 937-228-5248  
[snyrakspi@aol.com](mailto:snyrakspi@aol.com)

/s/Rose Ann Fleming  
Rose Ann Fleming  
BAR ID. #0041337  
ROSE ANN FLEMING, P.C.  
3855 Ledgewood Drive  
Suite 13  
Cincinnati, OH 45207  
Phone: 513-924-8389  
Fax: 513-924-8389  
Email: [Fleming@xavier.edu](mailto:Fleming@xavier.edu)